



1 Pursuant to Local Rule 6-2, the parties, through their undersigned counsel, hereby  
2 stipulate to and seek the Court's approval of an order vacating the deadlines set forth in the  
3 Order Setting Case Management Conference (the "Scheduling Order") dated November 2, 2010  
4 (Docket No. 3) and setting a schedule for the filing of an amended complaint.

5 **RECITALS**

6 WHEREAS, on November 2, 2010, plaintiff Merle Kovtun filed a class action (the  
7 "Action") against defendants Vivus, Inc., Leland F. Wilson, Wesley W. Day (collectively "De-  
8 fendants") in this Court;

9 WHEREAS, on November 2, 2010, the Court issued the Scheduling Order, pursuant to  
10 which the parties must: 1) meet and confer concerning initial disclosures and the subjects set  
11 forth in Rule 16(c); 2) file a joint case management statement by February 3, 2011; and 3) appear  
12 at a case management conference on February 10, 2011;

13 WHEREAS, on January 3, 2011 plaintiff John Ingram filed a Motion for Appointment of  
14 Lead Plaintiff and Approval of Selection of Counsel (Docket No. 10), pursuant to the Private  
15 Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4(a)(3)(B), scheduled to  
16 be heard on February 9, 2011, and on January 19, 2011 filed a memorandum of law in further  
17 support of said motion (Docket No. 18);

18 WHEREAS, plaintiffs Brent Dawson and Richard Wayne, having on January 3, 2011  
19 filed a joint Motion to Appoint Lead Plaintiff and Lead Counsel (Docket No. 7), filed a Notice of  
20 Non-Opposition to John Ingram's Motion to be Appointed as Lead Plaintiff and for Approval of  
21 His Choice of Counsel on February 1, 2011 (Docket No. 20);

22 WHEREAS, plaintiff John Ingram is currently the sole movant for appointment as lead  
23 plaintiff;

24 WHEREAS, discovery in this action is stayed pursuant to the provisions of the PSLRA;

25 WHEREAS, the parties have met and conferred, and in the interests of conserving  
26 judicial effort and resources and maximizing the efficiency of the prosecution of the Action, the  
27 parties agree that the deadlines set forth in the Scheduling Order should be vacated pending the  
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determination of Defendants' intended motion to dismiss and that the February 9, 2011 hearing on plaintiff John Ingram's Motion for Appointment of Lead Plaintiff and Approval of Selection of Counsel should be taken off the calendar;

WHEREAS, no prior scheduling modifications have been sought in this case;

**STIPULATION**

IT IS HEREBY STIPULATED AND AGREED, by and between undersigned counsel, and pursuant to Local Rule 6-2, subject to the approval of this Court, that:

1. The deadlines set forth in the Scheduling Order are vacated;
2. The February 9, 2011 hearing on plaintiff John Ingram's Motion for Appointment of Lead Plaintiff and Approval of Selection of Counsel is cancelled;
3. The Initial Case Management Conference scheduled for February 10, 2011 is adjourned pending further notice;
4. Plaintiffs will file an amended complaint ("AC") no later than 60 days after the entry of an Order appointing a lead plaintiff in this Action;
5. Defendants will file an answer or motion responsive to the AC no later than 60 days after Plaintiffs file an amended complaint;
6. In the event Defendants file a motion responsive to the AC, Plaintiffs will file opposition thereto no later than 60 days after filing of the motion, and Defendants will file any reply no later than 45 days after filing of the opposition.

Respectfully Submitted,

DATED: February 2, 2011

**MILBERG LLP**  
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NICOLE M. DUCKETT

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/s/ Azra Z. Mehdi  
AZRA Z. MEHDI

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Counsel for John Ingram, Merle Kovtun and  
[Proposed] Liaison Counsel for the Class

Dated: February 2, 2011

**BROWER PIVEN**  
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*/s/ David A.P. Brower*

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Counsel for John Ingram and  
[Proposed] Lead Counsel for the Class

Dated: February 2, 2011

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Counsel for Defendants Vivus, Inc., Leland  
F. Wilson and Wesley W. Day, Ph.D.

**ATTESTATION PURSUANT TO GENERAL ORDER 45**

I, Azra Z. Mehdi, attest that concurrence in the filing of this Stipulation and [Proposed] Order to Vacate Certain Case Management Deadlines and Set a Schedule for the Filing of an Amended Complaint has been obtained from each of the other signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 2nd day of February 2011, at San Francisco, California.

/s/ Azra Z. Mehdi  
AZRA Z. MEHDI

IT IS SO ORDERED, this 3 day of February, 2011

  
Hon. Phyllis J. Hamilton  
United States District Judge

DECLARATION OF SERVICE BY CM/ECF AND/OR MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, employed in the County of Los Angeles, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is One California Plaza, 300 South Grand Avenue, Suite 3900, Los Angeles, California 90071-3149.

2. Declarant hereby certifies that on February 2, 2011, declarant served the STIPULATION AND [PROPOSED] ORDER TO VACATE CERTAIN CASE MANAGEMENT DEADLINES AND SET A SCHEDULE FOR THE FILING OF AN AMENDED COMPLAINT by electronically filing the foregoing document listed above by using the Case Management/ Electronic Case filing system.

3. Declarant further certifies:

☒ All participants in the case are registered CM/ECF users and that service will be accomplished by the court's CM/ECF system

☐ Participants in the case who are registered CM/ECF users will be served by the court's CM/ECF system. Participants in the case that are not registered CM/ECF users will be served by First-Class Mail, postage pre-paid or have dispatched to a third-party commercial carrier for delivery to the non-CM/ECF participants as addressed and listed in the Service List.

4. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of February, 2011, at Los Angeles, California.

  
ELIZABETH VILLALOBOS